

## **523A.102 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. *"Authorized to do business within this state"* means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.
2. *"Beneficiary"* means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a combination thereof are to be provided under the purchase agreement.
3. *"Burial account"* means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without any related trust agreement.
4. *"Burial trust fund"* means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund's records or a related purchase agreement. *"Burial trust fund"* does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.
5. *"Cemetery merchandise"* means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.
6. *"Commissioner"* means the commissioner of insurance or the commissioner's designee.
7. *"Common business enterprise"* means a group of two or more business entities that share common ownership in excess of fifty percent.
8. *"Credit sale"* means a sale of goods, services, or an interest in land in which all of the following are applicable:
  - a. Credit is granted either under a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.
  - b. The buyer is a person other than an organization.
  - c. The goods, services, or interest in land are purchased primarily for a personal, family, or household purpose.
  - d. Either the debt is payable in installments or a finance charge is made.
  - e. For goods and services, the amount financed does not exceed twenty-five thousand dollars.
9. *"Delivery"* occurs when:
  - a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

10. "*Doing business in this state*" means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

11. "*Financial institution*" means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States, which holds funds under a trust agreement. "*Financial institution*" does not include:

a. A seller.

b. Anyone employed by or directly involved with the seller in the seller's cemetery merchandise, funeral merchandise, or funeral services business.

12. "*Funeral merchandise*" means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. "*Funeral merchandise*" does not include easements for burial rights in a completed space or cemetery merchandise.

13. "*Funeral services*" means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. "*Funeral services*" does not include perpetual care or maintenance.

14. "*Inner burial container*" means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, "*inner burial container*" includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

15. "*Insolvent*" means the inability to pay debts as they become due in the usual course of business.

16. "*Interest or income*" means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. "*Interest or income*" includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

17. "*Next of kin*" means the surviving spouse and heirs at law of the deceased.

18. "*Nonguaranteed*" means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

19. "*Outer burial container*" means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

20. "*Parent company*" means a corporation that has a controlling interest in a seller.

21. "*Personal representative*" means a personal representative as defined in section 633.3.

22. "*Provider*" means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

23. "*Purchase agreement*" means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

24. "*Purchase price*" means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller's general price list at the time the purchase agreement is signed.

25. "*Purchaser*" means a person who purchases cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

26. "*Sales agent*" means a person, including an employee, who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of the seller.

27. "*Seller*" or "*preneed seller*" means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. "*Seller*" or "*preneed seller*" includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. "*Seller*" or "*preneed seller*" does not include a person who has an ownership interest in a seller or preneed seller but who is not actively engaged in advertising, selling, promoting, or offering to furnish such cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

28. "*Total purchase price*" means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

2001 Acts, ch 118, §18; 2002 Acts, ch 1119, §78; 2004 Acts, ch 1104, §1; 2007 Acts, ch 175, §25, 51, 52; 2008 Acts, ch 1103, §1

